

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TONY PENWELL,

Plaintiff,

v.

CHERYL STRANGE, et al.,

Defendants.

CASE NO. 3:21-cv-5722 RJB-JRC

ORDER ON REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 24. The Court has considered the Report and Recommendation and the remaining file. No objections were filed to the Report and Recommendation.

The Plaintiff filed this case on September 28, 2021 asserting that his Eighth Amendment right to be free from cruel and unusual punishment is being violated by Defendants' decision to force the Plaintiff to be double-celled with another prisoner. Dkt. 1 and 7. He also makes claims under the Fourteenth Amendment. Dkt. 7. This case is related to two other cases filed by two

1 other inmates: *Ejonga-Deogracias v. Strange*, 2:21-cv-01004 RJB-JRC and *Schubert v. Strange*,
2 2:21-cv-01070 RJB-JRC.

3 The Plaintiff's application to proceed *in forma pauperis* ("IFP") in this case was granted.
4 Dkt. 6. The Plaintiff filed a Motion for Temporary Restraining Order and Preliminary Injunction
5 on October 25, 2021. Dkt. 10. In that motion, the Plaintiff requested that the Court order the
6 Defendants to cease double-bunking at the facility and cease transporting prisoners to other
7 facilities. *Id.* A Report and Recommendation was filed recommending that Plaintiff's Motion
8 for Temporary Restraining Order and Preliminary Injunction be denied. Dkt. 13. After an
9 extension of time for Plaintiff to file objections was granted, on January 3, 2021, that Report and
10 Recommendation was adopted. Dkt. 29.

11 The Plaintiff's motion for appointment of counsel was granted on December 23, 2021,
12 contingent on identification of counsel willing to represent plaintiff *pro bono* in this matter. Dkt.
13 23. Objections to that order have been filed and are noted for consideration on January 28, 2021.
14 Dkts. 27.

15 Now pending is a Report and Recommendation on the Plaintiff's motion to certify this
16 case as a class action (Dkt. 9). Dkt. 24. The Report and Recommendation recommends denying
17 the motion without prejudice because the Plaintiff is proceeding *pro se*, at the moment, and
18 because his motion for class certification, as argued, lacks merit. *Id.*

19 For the reasons stated in therein, the Report and Recommendation (Dkt. 24) should be
20 adopted. The Plaintiff's motion for certification of this case as a class action (Dkt. 9) should be
21 denied without prejudice. The case should be re-referred to U.S. Magistrate Judge Creatura for
22 further proceedings.
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1 It is **ORDERED** that:

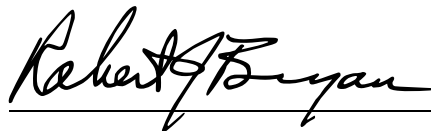
2 (1) The Report and Recommendation (Dkt. 24) **IS ADOPTED**;

3 (2) The Plaintiff's Motion for Certification of a Class (Dkt. 9) **IS DENIED WITHOUT**
4 **PREJUDICE**; and

5 (3) This case **IS RE-REFERRED** to U.S. Magistrate Judge Creatura for further
6 proceedings.

7 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge
8 Creatura, all counsel of record, and to any party appearing *pro se* at said party's last known
9 address.

10 Dated this 18th day of January, 2022.

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12 ROBERT J. BRYAN
13 United States District Judge
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